

1979 WL 42929 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 16, 1979

\*1 The Honorable L. Edmund Atwater, III  
Director  
South Carolina Court Administration  
Post Office Box 11788  
Columbia, South Carolina 29211

Dear Mr. Atwater:

In a recent letter to this Office, your office raised the following questions:

1. Do the judges of the court of general sessions, magistrate courts, and municipal courts have the authority to impose court costs on persons convicted of criminal offenses?
2. Can court costs be charged to persons who have been found not guilty after trial by jury or trial by judge in criminal cases?

As to your first question, reference is made to a previous opinion of this Office, a copy of which is enclosed, which stated in part: generally, costs in criminal proceedings are those charges fixed by law which have been necessarily incurred in the prosecution of one charged with a public offense. At common law costs as such in criminal cases were unknown. Therefore, it is the rule in criminal as well as in civil cases that the recovery and allowance of costs rests entirely on statutory provisions, in other words, no right to or liability for costs exists in the absence of statutory authorization. Such statutes are penal in their nature and, therefore, are to be strictly construed. 20 C.J.S., Costs, Section 435, p. 677.

As you are aware, there is pending in the General Assembly a bill, S. 402, which provides for certain costs. Therefore, with reference to the above earlier opinion, only such court costs as provided by such Act, assuming final passage, or by any other statute may be imposed by a particular court.

As to your remaining question of whether court costs may be charged to persons who have been found not guilty after trial by jury or trial by judge in criminal cases, generally, a 'defendant is not liable to pay costs on acquittal in the absence of statute, or, a fortiori, where a statute expressly exempts him from costs on acquittal.' 20 C.J.S. Costs, Section 437, p. 678. Therefore again, reference should be made to the above Act after final passage or any other relevant statutory provisions for a determination of whether in fact a defendant who is acquitted is liable for any court costs.

If there is anything further, do not hesitate to contact this Office.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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